

The Honorable Justin L. Quackenbush

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Attorneys for Plaintiff Burnett and the Class

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

LEAH BURNETT, on her own behalf  
and on behalf of a CLASS OF  
SIMILARLY SITUATED  
EMPLOYEES OF DEFENDANT,

Plaintiffs,

v.

WEST CUSTOMER  
MANAGEMENT GROUP, LLC, a  
Delaware limited liability company,

Defendant.

**CLASS ACTION**

No. CV-10-056-JLQ

**THIRD DECLARATION OF  
STEPHEN P. CONNOR IN  
SUPPORT OF PLAINTIFF'S  
MOTION FOR FINAL  
APPROVAL OF CLASS  
ACTION SETTLEMENT**

**DATE: FEBRUARY 18, 2011  
TIME: 10:30 A.M.  
WITH ORAL ARGUMENT**

STEPHEN P. CONNOR certifies and states as follows:

1. I am one of the Class Counsel in this case. I have personal  
knowledge of the facts herein and am competent to testify.

2. We appreciate the Court's having identified for us concerns it has  
regarding the request for final approval. This declaration and the accompanying

1 memorandum are submitted in order to address those concerns prior to the  
2 hearing on final approval. I will, of course, be happy to address these and any  
3 other concerns the Court may have at the hearing.

4 **Notice.**

5 3. We apologize that we did not attach a copy of the notice sent to  
6 class members in our pleadings seeking final approval. The notice sent was that  
7 which was previously approved by the Court (with changes as directed by the  
8 Court). A copy of the Notice provided to class members is attached to the  
9 Second Declaration of Stacy Roe.

10 **Mischaracterization of Court's Prior Rulings.**

11 4. I am particularly sorry about language contained in our pleadings  
12 that the Court apparently finds to be misrepresentative of its prior rulings in this  
13 matter. We understood that the Court had not made any final determination as  
14 to the propriety of the proposed settlement and used the term "preliminary  
15 approval" in the sense it is commonly used: to indicate that the Court had  
16 reviewed the settlement and authorized notice of the proposed settlement be sent  
17 to the class. We do understand that this Court has authority to determine the  
18 reasonableness of any fee request made, that any request for fees is subject to  
19 this Court's approval, and that this Court has not made any ruling with regard to  
20 such request. Our communications with class members did not suggest or imply  
21 that any aspect of the proposed settlement had been approved by the Court.

22 **Amount of Settlement Payment.**

23 5. The Court's expressed concern about not knowing the amount  
24 actually paid to class members arises because payment will not be made unless  
25 and until this Court grants final approval. Pursuant to the terms of the proposed  
settlement agreement, West is obligated to pay pursuant to a specific formula.

1 Although the funds have not yet been paid to the Settlement Administrator  
2 (because payment is contingent upon the granting of final approval), West has  
3 advised that the amount will be slightly in excess of \$320,000.

4 6. It is important to note that, in contrast to the vast majority of class  
5 action settlements which require class members to submit claim forms in order  
6 to receive payment, we negotiated for the unconditional payment to all class  
7 members without the need for them to submit claim forms. This was an  
8 important concession that we obtained from West and highly beneficial to the  
9 class. Thus, with the potential exception of class members who could not be  
10 located, all class members will receive the payments provided for by the  
11 settlement. (This is in stark contrast to the approximate ten to twenty percent  
12 payment rate for class settlements where class members are required to submit  
13 claim forms.)

14 7. According to Ms. Roe, Rust successfully identified and delivered  
15 notice to approximately ninety percent (1908 out of 2020) potential class  
16 members. Rust took a number of steps to locate class members who have  
17 moved over the years, including searching postal service records and using class  
18 members' social security numbers to attempt to track down current address  
19 information. Thus, approximately ninety percent of the settlement funds paid  
20 by West will be distributed to class members. That percentage may be higher if  
21 former employees learn that they are entitled to payment and communicate with  
22 counsel or with Rust. Pursuant to the terms of the settlement, no class member  
23 will receive less than \$25.

24 **Time Spent Preparing Request for Fees.**

25 8. The Court's order suggests that it believes counsel spent a  
substantial amount of time preparing its request for fees. I do not think that the

1 amount of time was substantial or inordinate. Ms. Sargent spent approximately  
2 four hours researching case law concerning fee requests and communicating  
3 with Mr. Johnson regarding his declaration in support of our fee request. The  
4 majority of my time on January 18 and 19, 2011 (a total of eight hours) was  
5 spent researching our fee request, and a brief amount of time was spent on those  
6 days communicating with Mr. Isserlis who provided me the declarations  
7 attached to my declaration. I spent the rest of that time on January 18 and 19  
8 preparing my declaration in support of our request. I have spoken to Mr. Cogan  
9 who stated that none of the time for which he has requested compensation is  
10 related to our request for fees. (Ms. Sargent prepared Mr. Cogan's declaration  
11 and he did not charge any time for reviewing or signing it).

12 **Proportionality of Fee Request and Settlement Amount.**

13 9. The Court indicates that the requested fees constitute forty-four  
14 percent (44%) of the amount potentially payable to class members. While as  
15 noted in our accompanying memorandum, we believe that the appropriate basis  
16 for computation of fees in this case would be based on the lodestar, in cases  
17 where fees have been awarded based on a percentage of the common fund,  
18 courts have included in the "common fund" payments made to class members,  
19 payments for attorneys' fees, and costs of administration.

20 10. If the Court were to grant the fees requested and assume that the  
21 full amount of the settlement is paid out to class members, then our fee would  
22 constitute 28% of the pseudo-common fund generated by the settlement. (I  
23 come to that number by dividing the \$141,000 (the amount of the fees  
24 requested) by that amount plus the amount to be paid for the benefit of the class.  
25 (\$141,000 + \$320,000 + \$30,000 for administration as stated in the Second Roe  
Declaration)).

1           11. I fully appreciate that the hours expended by us on this matter are  
2 substantial. While I will address this in more detail at the hearing if the Court  
3 so desires, I would like to make few observations about our hours and our rates.

4           12. This case settled relatively promptly. At the outset of this litigation  
5 it did not appear to me that it was likely to do so. The defendant is a large  
6 national company. It is represented by a large Texas law firm and had a  
7 national law firm as local counsel. Although we achieved a relatively early  
8 settlement, doing so was, in itself, time-consuming. We did not reach a  
9 settlement at the conclusion of a lengthy day of mediation and negotiations  
10 continued over a number of weeks concerning details we considered relevant to  
11 the well-being of the class. Reaching agreement involved numerous continuing  
12 discussions with the mediator and opposing counsel, and reviews of proposed  
13 settlement language.

14           13. Even after a settlement is reached with a defendant, class actions  
15 are time-consuming under the best of circumstances. The preparation and cross-  
16 review of documents to be submitted to the court is time consuming; there is a  
17 need to interact and coordinate with the designated administrator; and there is a  
18 need to communicate with substantial numbers of class members. All of these  
19 were necessary to effectuate this settlement and constitute a substantial portion  
20 of the time sought by us in this case. Our fee request does not include time we  
21 will likely spend following final approval interacting with class members  
22 concerning questions they have about their claims, checks and the like.

23           14. I recognize that courts have, at times, considered different hourly  
24 rates to be appropriate for time spent before and after a settlement is reached.  
25 The rationale for doing so is often that time spent after a settlement is not  
contingent and, hence, worthy of a lesser hourly rate. I would like to note my

1 disagreement with that analysis. Plaintiff's counsel in class actions are not  
2 actually assured of payment until they receive a payment check in the mail. Not  
3 only does the defendant have to sign off on every detail of the settlement before  
4 it is presented to the court, but until the final hearing, there is no guarantee that  
5 the settlement will be approved. Moreover, final approval does not necessarily  
6 assure payment. Ms. Sargent and I presently appear unlikely to receive fees in a  
7 class action in which we achieved settlement after having won contested  
8 certification and summary judgment motions because the defendant is now  
9 asserting insolvency. At the time we litigated the case, we had no reason to  
10 believe that the defendant would not be able to pay a judgment to the class or  
11 fees.

12 **I declare under the penalty of perjury under the laws of the state of**  
13 **Washington that the foregoing is true and correct.**

14 SIGNED this 10<sup>th</sup> day of February, 2011, at Seattle, Washington.

15  
16 s/Stephen P. Connor  
17 **Stephen P. Connor, WSBA No. 14305**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 10, 2011, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of filings to the following:

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DATED: February 10, 2011.

s/Ane-Marie E. Sargent  
Anne-Marie E. Sargent, WSBA No. 27160